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**Glenmark Associates, Inc. d/b/a Cedar Ridge Nursing and Rehabilitation Center and District 1199, The Health Care and Social Service Union, SEIU, AFL-CIO. Case 9-CA-34081**

September 20, 1996

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS BROWNING  
AND FOX

Pursuant to a charge and amended charge filed on August 2 and 6, 1996, respectively, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on August 9, 1996, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 9-RC-16556. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On August 27, 1996, the General Counsel filed a Motion for Summary Judgment and Memorandum in Support, with exhibits attached. On August 28, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On September 11, 1996, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

In its answer and response the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of the Board's unit determination in the representation proceeding. The Respondent alleges that the licensed practical nurses (LPNs) are statutory supervisors and therefore the certified unit is invalid.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable

in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a West Virginia corporation, has been engaged in the operation of a nursing home providing skilled nursing care at its Sissonville, West Virginia facility.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its operations, derived gross revenues in excess of \$100,000 and purchased and received at its Sissonville, West Virginia facility goods valued in excess of \$5000 directly from points outside the State of West Virginia. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

*A. The Certification*

Following the election held July 7, 1995, the Union was certified on April 29, 1996,<sup>1</sup> as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full time and regular part-time licensed practical nurses (LPNs) employed by the Employer at its Sissonville, West Virginia facility, excluding all professional employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

*B. Refusal to Bargain*

About May 30, 1996, the Union, in writing, requested the Respondent to bargain, and, about July 22, 1996, the Respondent, by letter, refused. We find that this refusal constitutes an unlawful refusal to recognize and bargain in violation of Section 8(a)(5) and (1) of the Act.

**CONCLUSION OF LAW**

By refusing on and after July 22, 1996, to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the appro-

<sup>1</sup> Pursuant to a petition filed in Case 9-AC-99, on August 7, 1996, the Union's certification as the exclusive collective-bargaining representative of the unit was amended to correct the name of the Respondent.

priate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

#### ORDER

The National Labor Relations Board orders that the Respondent, Glenmark Associates, Inc. d/b/a Cedar Ridge Nursing and Rehabilitation Center, Sissonville, West Virginia, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Refusing to recognize and bargain with District 1199, The Health Care and Social Service Union, SEIU, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

##### 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full time and regular part-time licensed practical nurses (LPNs) employed by the Employer at its Sissonville, West Virginia facility, excluding all professional employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Sissonville, West Virginia, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of

<sup>2</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a

the notice, on forms provided by the Regional Director for Region 9 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 2, 1996.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 20, 1996

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William B. Gould IV, Chairman

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Margaret A. Browning, Member

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Sarah M. Fox, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with District 1199, The Health Care and Social Service Union, SEIU, AFL-CIO as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full time and regular part-time licensed practical nurses (LPNs) employed by us at our Sissonville, West Virginia facility, excluding all professional employees, guards and supervisors as defined in the Act.

GLENMARK ASSOCIATES, INC. D/B/A  
CEDAR RIDGE NURSING AND REHABILITATION CENTER